PUBLIC MATTER – DESIGNATED FOR PUBLICATION

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REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **ROBERT D. RUDNICK**, Petitioner for Reinstatement.	)))))))	**03-R-03557** **OPINION ON REVIEW**

After resigning from the State Bar in 1989 with charges pending that alleged misappropriation of client trust funds, petitioner Robert D. Rudnick filed a petition for reinstatement on September 2, 2003. After two days of testimony, the hearing judge concluded that petitioner met his burden of showing clear and convincing evidence that he is rehabilitated, has the requisite present moral fitness, and the present learning and ability in the law to be reinstated.

The State Bar's Office of Chief Trial Counsel (State Bar) sought review, but withdrew its request prior to the completion of briefing. After this court transmitted the recommendation for petitioner's reinstatement to the Supreme Court, it ordered that we review the hearing judge's decision before deciding whether to grant petitioner's reinstatement. The State Bar subsequently sought our review on the grounds that petitioner has not met his burden of proof regarding his rehabilitation and present moral fitness. Specifically, the State Bar asserts that petitioner has not shown rehabilitation and present moral fitness because he has not established a lengthy course of truly exemplary conduct. He failed to disclose nine lawsuits, along with other omissions, and

failed to timely comply with rule 955, California Rules of Court. The State Bar does not challenge that petitioner has met his burden to show his present learning and ability in the law.[1]

Petitioner asserts that he has met his burden showing his good character and rehabilitation, and that the State Bar's assertions do not negate his evidence of rehabilitation and present moral fitness, despite omissions in his petition for reinstatement. In addition, petitioner argues that he has established a lengthy period of exemplary conduct, and also that his failure to comply with rule 955 does not negate his showing of rehabilitation.

As we shall discuss, on an independent review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207), we have concluded that the hearing judge erred in his conclusions and recommendation, and that petitioner has not met his burden of proof to show his rehabilitation. For these reasons, we shall deny petitioner's request for reinstatement.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Background and Pre-Resignation Conduct

Petitioner was admitted to the practice of law in January 1970. Initially, he worked as an attorney in the Los Angeles area, but relocated to Palm Springs in either 1971 or 1972.[2] Upon moving to Palm Springs, petitioner worked as an associate for another attorney. Sometime in 1972, petitioner opened his own general law practice in Palm Springs involving mainly real estate, personal injury, landlord-tenant, and contract matters. Petitioner practiced law for approximately ten years before being privately reproved for aiding and abetting an out-of-state attorney in the unauthorized practice of law.[3]

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[1]The State Bar also does not contest that petitioner has passed the Multistate Professional Responsibility Examination. (See Cal. Rules of Court, rule 9.10(f).)

[2]Petitioner was not sure of the year he moved to Palm Springs.

[3]The court grants the State Bar's request to take judicial notice of petitioner's prior record of discipline.

Starting in 1986, petitioner began to experience financial difficulties due to his choice to send his four children to private schools. Petitioner initially approached his sister for a loan to help address his ballooning financial debts. His sister offered help on the condition that petitioner withdraw his children from private school. Petitioner refused to comply with this advice and turned to alternative means to pay his expenses.

Beginning in 1986, petitioner started to use his client trust account "as his own bank." He began a repeated pattern of withdrawing money from the account and replacing it when subsequent settlement money was awarded to his clients. One client's misappropriated money was repaid by the next client's settlement award. By petitioner's own testimony, he misappropriated more than $160,000 of trust funds from between 15 and 20 clients over a three-year period. Over this three-year period, petitioner's law practice experienced financial difficulties, including the loss of some clients and the strain from the advancement of costs regarding a civil rights case. Eventually, petitioner could no longer replace the misappropriated funds.

The State Bar filed a Notice of Disciplinary Charges (NDC) in December 1988, alleging that petitioner misappropriated money from two clients. Petitioner does not dispute those allegations. The NDC alleged in count one that on July 15, 1986, petitioner settled a claim for $57,500 on behalf of his client, John Neldberg, that the funds were deposited into the client trust account the next day, that petitioner misappropriated the money, and that the money was not paid until October 14, 1986, on which date petitioner remitted $36,657.59 to Neldberg. The NDC also alleged in count two that Gina Gomez received a settlement on October 10, 1986, in the amount of $69,500, that the money was deposited into the client trust account on October 16, 1986, that petitioner misappropriated those funds, and that $52,125 was not paid to Gomez until December 11, 1986, after a complaint was made to the State Bar.[4]

[4] The record is unclear as to whether the differences in the amounts paid to Neldberg and Gomez reflected petitioner's respective fees, or if those amounts were simply not repaid.

On June 6, 1989, petitioner resigned with charges pending from the practice of law, and his resignation was accepted by the Supreme Court on December 14, 1989. Incident to resigning, he was ordered to comply with California Rules of Court, rule 955.[5]

At the time petitioner resigned, criminal charges were pending against him concerning another client, Larry Fisher. Fisher filed a complaint with the Riverside County District Attorney in February 1989, alleging that petitioner misappropriated $25,000 of a $45,000 settlement award. Unlike the previous misappropriations, petitioner was financially unable to replace Fisher's $25,000 back in the client trust account.[6]

On September 15, 1989, petitioner pled guilty to one count of felony grand theft from Fisher. (Pen. Code, § 487.) On November 1, 1989, he was placed on probation for five years on the conditions that he serve the first 300 days in the county jail, and that he make restitution to his victims.[7] On November 27, 1989, petitioner began his jail commitment. He was subsequently released after serving 57 days and placed in a work release program.[8]

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[5]This rule has been renumbered as rule 9.20. All further references to former rule 955 are to this current rule 9.20.

[6]On June 29, 1989, petitioner filed bankruptcy under Chapter 11 with the United States Bankruptcy Court, Central District of California, which was later converted to a Chapter 7 proceeding. The bankruptcy estate continued until March 29, 1999.

[7]The Probation Officer's Report listed Fisher and two other clients as victims: Paul Maciel and the DeMatisse family. The exact amount petitioner misappropriated from Fisher was $25,950. This was repaid to Fisher as ordered by the terms of petitioner's probation out of his bankruptcy estate. (See footnote 4, *ante*.) The State Bar and petitioner stipulated that on November 25, 1989, Fisher had been paid in full from bankruptcy funds.

According to the Probation Officer's Report, petitioner had misappropriated from the trust account $39,500.69 from Paul Maciel and $10,000 from the DeMatisse family. The amount was owed to Maciel from a settlement that petitioner took from the trust account and did not repay. In addition to that amount, Maciel obtained a non-dischargeable debt claim against petitioner for $7,050.56 in connection with petitioner's bankruptcy settlement. Petitioner testified that he did not remember the DeMatisse family as among his victims.

[8]Petitioner's felony conviction was reduced to a misdemeanor on March 8, 1993, his guilty plea was set aside, and the action was dismissed.

Petitioner maintained employment after his release from jail in various jobs, including work in the legal field and real estate.[9] From his release through the time of filing his petition for reinstatement, petitioner struggled financially, and he testified that his lifestyle changed dramatically after his resignation and incarceration. His wife started working, and he could no longer pay for his children's education. Petitioner sold his home and moved into an apartment. As of the time of his petition, petitioner had outstanding loan obligations totaling $49,250.16.[10]

On September 2, 2003, petitioner filed his petition for reinstatement, which we now review.

B. Petitioner's Evidence to Show Rehabilitation

Petitioner testified that, in connection with his criminal conviction, his defense attorney compiled a list of clients from whom petitioner misappropriated money and in what amount. Petitioner did not submit this list or any other testimonial or documentary evidence as to the names, amounts misappropriated, or amounts remitted to the remaining 10 to 15 clients.[11]

Petitioner's testimony demonstrates his lack of knowledge of the extent and victims of his defalcations.[12] The hearing judge accounted for a total of over $160,000 of misappropriated

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[9]Petitioner received a restricted real estate salesperson's license in 1991.

[10]This amount includes a debt of $1,943 that was originally undisclosed on the petition for reinstatement.

[11]When asked whether or not he had compiled a list of those clients, petitioner stated: "I don't recall that I did. However, my attorney who represented me in the criminal matter . . . as I recall, made up a list, either obtained from my trust account or information [*sic*], and presented that to the Court." Additionally, petitioner testified that he did see the list and "noticed that there were several names that were not clients that I embezzled from. They were regular fees that I had a right to."

[12]"Q [State Bar] All right. Let's talk about how many clients, between 1986 and 1989, had their funds misappropriated. I think you testified earlier today that there was Mr. Larry Fisher, and there was a Mr. Mecielle or Macielle, and I believe you also indicated, at least in the deposition that we took on the 27th of August, that there was the De Matisse family. Those were three of how many other clients whose monies you had misappropriated?

funds. While that is literally correct, our record review shows that the amount misappropriated from only the five identified clients is at least $164,233.28.[13] The total amount he misappropriated remains unknown. Regarding restitution, petitioner submitted evidence to show that Fisher and Maciel were repaid out of his bankruptcy estate.[14] Petitioner offered no specific

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"A [Petitioner] Well, you mentioned De Matisse. I don't have an independent recollection of De Matisse. I think I saw that on a probation report, and I believe that was the basis for my testimony. However, I have reviewed documents that you provided counsel, and I thought about the number of people, and I would say it probably was in the 15 to 20 number. [¶] . . . [¶]

"Q Okay. Let me ask you this. At the time that you were preparing to file your petition for reinstatement to the practice of law, you know, sometime before or at or near the time that you filed it, did you contact anybody at the State Bar to determine what, if any, matters had been pending against you that were closed or terminated, as we say, at the time that your resignation was accepted?

"A Not that I recall. [¶] . . . [¶]

"Q Okay. Can you tell us, in your best estimate, as you sit here today, how much, in dollars and – dollars – I'm not going to hold you to cents, but how many dollars did you embezzle between 1986 and 1989?

"A I recall Mr. Fisher's, which was 30,000. I recall Macielle, which was approximately 40,000. I can't recall numbers of any of the other clients, and, as I testified previously, some of the funds that replenished the embezzled from I took (sic) my trust account came from me. [¶] . . . [¶]

"Q . . . I'm not asking you about returning money, because, for example, let me turn – again invite your attention, once again, to Exhibit 1, which is the notice to show cause that was filed in 1988, which alleges that you received and deposited in your client trust account 57 and a half thousand dollars on behalf of Mr. Nellburg [*sic*], and that ultimately you remitted some over 36 and a half thousand dollars to him. All right.

"Does that, to the best of your knowledge, reflect accurately what occurred?

"A I can't recall, but, you know, I see this, and I'm reading it, and I see these numbers, and I just presume that the State Bar is accurate as to these numbers and the clients."

[13]The record reflects that petitioner misappropriated the following: $36,657.59 from Neldberg, $52,125 from Gomez, $25,950 from Fisher, $39,500.69 from Maciel (not including the non-dischargable debt claim of $7,050.56), and $10,000 from the DeMatisse family.

[14]This amount is $65,450.69. Petitioner did not present evidence of restitution to the DeMatisse family. Neldberg and Gomez appear to have been made whole; however, the only evidence regarding their respective payments was contained within the NDC filed on December 29, 1988, by the State Bar.

evidence as to the timing of restitution or source of funds to repay the 10 to 15 other clients, testifying simply that all of his clients had been repaid.

C. Omissions from the Petition for Reinstatement

The 2003 petition listed 11 lawsuits in which petitioner was involved since his resignation.[15] Petitioner did not disclose nine lawsuits in his petition for reinstatement. On August 27, 2004, the State Bar scheduled a deposition to take petitioner's testimony in connection with his petition. The State Bar presented information to petitioner regarding the omitted lawsuits at that deposition, and petitioner testified that not until that deposition did he become "aware" of those cases. Petitioner filed a supplement to his petition on September 7, 2004, a year after filing his petition, in which he listed the nine omitted lawsuits.

The omitted lawsuits involved a personal injury action filed in the Los Angeles Superior Court in which petitioner was the defendant; a personal injury action filed in the Kern County Superior Court in which petitioner was the plaintiff; an action to recover fees filed in the Riverside Municipal Court in which the petitioner was the defendant; an action to recover referral fees from his cousin filed in the Riverside Municipal Court in which the petitioner was the plaintiff; an unlawful detainer action filed in the Riverside Municipal Court in which the petitioner was the defendant; a breach of contract case filed in the Orange County Superior Court in which the petitioner was the defendant; a complaint arising from a condemnation of trust property filed in the Kern County Superior Court in which petitioner was the defendant and cross-complainant; a commercial complaint filed in the Los Angeles County Superior Court in

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[15]The 11 disclosed lawsuits were: a subrogation case in which petitioner was the defendant; petitioner's bankruptcy; two personal injury cases in which petitioner was the plaintiff; a small claims case involving the nonpayment of wages in which petitioner was the plaintiff; an unlawful detainer action in which petitioner was the defendant; a case for declaratory relief in which petitioner was the plaintiff; the dissolution of marriage between petitioner and his wife that at the time of petition was still pending with reconciliation discussions ongoing; proceedings involving the ongoing administration of a testamentary trust in which petitioner is a beneficiary; a liquidation of a trust in which petitioner is a beneficiary; and an appeal in which petitioner was the appellant.

which the petitioner was a defendant; and a case alleging breach of contract, fraud, and deceit filed by petitioner's client, Fisher, in the Riverside Superior Court in which petitioner was the defendant.

The omitted lawsuit involving Fisher arose out of petitioner's misappropriation of Fisher's money from the client trust account. Fisher filed a civil claim in Riverside County against petitioner on February 10, 1989. The claim was settled on March 21, 1994, for $65,000 and was paid out of petitioner's bankruptcy estate. This amount is separate from the $25,950 that was paid to Fisher as restitution for petitioner's misappropriation. Petitioner submitted details of this claim and the manner in which it was settled in the supplement to his petition.

Petitioner testified as to the reasons why he did not disclose the nine lawsuits. He stated that he missed those lawsuits because he hurriedly prepared the petition as he believed the petition had to be filed within a year of getting the favorable results of the Multistate Professional Responsibility Exam (MPRE).[16] Petitioner also testified that his non-disclosure was inadvertent as he only focused on litigation that had occurred in Riverside County.

In the financial obligations section of his reinstatement application, petitioner did not disclose a debt of $1,943 to a creditor, TRACO. This debt was disclosed in the supplement to the petition, and was settled subsequent to filing his petition for reinstatement.

D. Evidence of Current Learning and Ability in the Law

Petitioner had several jobs after his release from jail. According to the petition for reinstatement, he worked as a law clerk for three months in 1994, where he conducted legal research and prepared legal briefs, complaints, answers, interrogatories, and Chapter 11

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[16]Petitioner first took the MPRE on August 9, 2002. He testified that he believed the petition for reinstatement had to be submitted within one year of receiving the results of the MPRE, but later found out that the year ran from the date of the examination. Rule 665(a) of the Rules of Procedure of the State Bar provides that proof of passage of the MPRE must be shown to have occurred after the "resignation but not more than one year before the filing of the petition for reinstatement." Petitioner submitted the petition for reinstatement on August 30, 2003. He retook the MPRE on March 13, 2004. Petitioner passed the MPRE both times.

bankruptcy filings. Petitioner also stated in his petition that he worked as a law clerk/real estate salesperson from June 1995 to September 1996, where he performed legal research and obtained real estate listings and buyers.

Petitioner's testimony regarding his learning and ability in the law relied primarily on the work he has done in connection with two trusts in which he is one of several beneficiaries.[17] In connection with one of those trusts, he testified that he worked with a trust attorney for about 100 hours, for which he was paid for about 50 hours.[18] Petitioner also testified that he attended public meetings in connection with his family's property, Onyx Ranch, in Kern County. Also in connection with Onyx Ranch, petitioner testified that he researched various wind and water rights issues. In total, he has spent between 200 and 300 hours conducting this research, and submitted copies of various legal memoranda he had prepared from January through September 2003.

Petitioner also submitted evidence of attending 15 hours of continuing education, all relating to trust issues. He also listened to the State Bar's 12-hour Mandatory Continuing Legal Education Self-Study Audio Program for 2001.

E. Other Evidence Toward Rehabilitation

Petitioner submitted 13 witness declarations in support of his character. The witnesses included attorneys, family members, business associates, and petitioner's girlfriend. All of the witnesses stated that they were fully aware of the scope of petitioner's misconduct, conviction, and reasons for his resignation. All stated their belief that petitioner is remorseful for his actions.

Several of the witnesses had worked in a legal capacity with petitioner. Petitioner's son, who is an attorney, worked with petitioner for a three-month period at a legal clinic where they were both law clerks in 1994. Mary Ann Bluhm, an attorney hired in 2003 to work on a trust

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[17]These trusts are the Oscar Rudnick Testamentary Trust and the Rudnick Estate Trust. These trusts have been subjected to litigation both prior to and after petitioner's resignation.

[18]Petitioner testified that he only billed the attorney for 50 hours' worth of work.

appeal involving petitioner's family trust, prepared appellate briefs with input from petitioner. Stanley Jacobs, an attorney and friend since 1955, worked with petitioner in the late 1980's on a personal injury case. Those attorneys all stated that petitioner was forthright in disclosing his misconduct and that he has the necessary character and legal ability to be a member of the bar.

Petitioner also testified on his own behalf about his childhood, education, and his family obligations as an adult. He described the stresses and financial pressures that caused him to misappropriate funds from his client trust account, including the increasing costs of maintaining his children at private schools. Petitioner assured the hearing judge that the financial pressures that engendered his misconduct are no longer in existence as all of his children are grown. Petitioner also assured the court that his misconduct would never happen again. He expressed remorse and stated that he wanted to volunteer with the State Bar to help develop a program to discourage attorneys from resorting to the same misconduct as he did when faced with financial pressures.

Petitioner also testified as to his community involvement. Subsequent to petitioner's resignation, he was a member of the West Mojave Plan of the Desert Mountain Resource Conservation and Development District.[19] He attended meetings as a member of the West Mojave Plan, and participated in negotiations with the Friends of Jaw Bone Canyon, an off-road vehicle group. Petitioner also spent one day helping build a house with Habitat for Humanity, and spent 50 hours over two years volunteering with Beyond Tolerance.[20]

Petitioner did not comply with California Rules of Court, rule 9.20, until December 7, 2004, over a month after the hearing below. He testified that he believed the rule was not

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[19]Petitioner's interest in this group arose out of concerns regarding property held in the two family trusts.

[20]Beyond Tolerance is a non-profit organization that organized students in the Santa Barbara School District on trips to the Museum of Tolerance in Los Angeles. Petitioner became involved in this organization through his girlfriend, Adele Rosen.

applicable to him because he had no clients at the time of his resignation. Petitioner also asserted that at the time he signed his resignation, he was distraught and was not thinking clearly. He testified that given his present understanding of the rule, he would have complied with it at the time of his resignation.

F. Hearing Judge's Findings

The hearing judge recommended that petitioner be reinstated. After discussing petitioner's childhood and family background, the hearing judge then made findings regarding the misconduct that led to petitioner's resignation. The hearing judge found, without any detail, that petitioner had made full restitution to all clients in which petitioner misappropriated money.

After concluding that full restitution had been made, the hearing judge found that petitioner met his burden of showing that he is rehabilitated. The hearing judge attributed petitioner's rehabilitation to his community service, attendance in religious classes, and that petitioner was seeking reinstatement to "clean up the mess" he created. The hearing judge also considered petitioner's testimony that he had lost his dignity and wants to be useful in society, and that he no longer faced the stresses that caused him to misappropriate his clients' money. The hearing judge found that petitioner expressed remorse and shame.

The hearing judge did find the omission of nine lawsuits "troubling," reflecting a failure by petitioner to take his duties and obligations as a lawyer seriously. Nevertheless, the judge did not find these omissions sufficient to disqualify petitioner from reinstatement because the omitted lawsuits occurred after petitioner's incarceration. The hearing judge determined that this was a traumatic period in petitioner's life and the lawsuits were remote in time. He also found that most of the lawsuits involved "mundane" matters and did not reflect negatively on petitioner's ability to practice law. The hearing judge also found that petitioner did not wilfully seek to hide the Fisher lawsuit. In addition, the hearing judge gave great weight to the character testimony.

As to petitioner's present learning in the law, the hearing judge found that his work as a law clerk and the work researching issues related to his family's trust property was sufficient to meet the standard of proof required.

II. DISCUSSION

A. Applicable Law

The legal standards required for reinstatement are well-established. A petitioner seeking readmission after disbarment or resignation with charges pending has the burden of proving by clear and convincing evidence that he meets the requirements for reinstatement. (*In the Matter of Giddens* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 25, 30.) A decision recommending reinstatement must be based on clear and convincing evidence that the petitioner is rehabilitated, has the present moral qualifications for reinstatement, has present ability and learning in the law, and passed the MPRE. (Rules Proc. of State Bar, rule 665(a), (b).)

While the law looks with favor upon the regeneration of errant attorneys (*In re Andreani* (1939) 14 Cal.2d 736, 749), the burden on the petitioner to prove his rehabilitation is a heavy one. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091.) A petitioner must present stronger evidence of his present honesty and integrity than one seeking admission for the first time, whose character has never been in question. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) This requires that the evidence presented must be considered in light of the moral shortcomings that resulted in the imposition of the discipline. (*Ibid.*)

On our independent review of the record (*In re Morse, supra*, 11 Cal.4th at p. 207), we find that petitioner has not met his burden of proof regarding his rehabilitation.

B. Restitution

Since serious misappropriation of trust funds led to petitioner's resignation, the most significant starting point in assessing his rehabilitation is examining the nature and extent of his amends to his former clients. This record presents a paucity of evidence to show petitioner's restitution in a way that would allow us to determine whether it is consistent with rehabilitation.

The State Bar correctly states that a serious and protracted pattern of egregious abuse of client trust requires a substantial period of exemplary conduct to make a showing of rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1096.) Petitioner is also correct in his assertion that " ' "the passage of an appreciable period of time" constitutes an "appropriate consideration" in determining whether a petitioner has made sufficient progress towards rehabilitation.' [Citations.]" (*In the Matter of Rudman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 546, 558.) However, both fail to understand that "[o]ur concern, however, is not just in counting the correct number of years for measuring petitioner's rehabilitation; but more importantly, to assess the quality of petitioner's showing in light of his very serious misconduct . . . ." (*In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 464.) Thus, petitioner's burden is to present clear and convincing evidence so that the court may assess the quality of petitioner's showing of rehabilitation regarding the misappropriation of a large sum of money from 15 to 20 clients.

Petitioner engaged in a repeated pattern of theft of client funds for three years. This represented a continuing course of serious professional misconduct. (E.g., *Tomlinson v. State Bar* (1975) 13 Cal.3d 567 [disbarring an attorney who repeatedly misappropriated client funds finding he was not worthy of being held out to the public as a person of trust].) Petitioner's misconduct was sufficiently egregious to have warranted his summary disbarment had he not submitted his resignation. (See *In re Ewaniszyk* (1990) 50 Cal.3d 543 [noting that misconduct occurring after the adoption of Business and Professions Code section 6102 on January 1, 1986, results in summary disbarment of an attorney upon a conviction of the type petitioner suffered].)

We take seriously the charge that we must not reinstate an attorney unless he presents "the most clear and convincing, nay, we will say upon overwhelming, proof of reform – proof which we could with confidence lay before the world in justification of a judgment again installing him in the profession which he has so flagrantly disgraced." (*In the Matter of Stevens* (1922) 59 Cal.App. 251, 255.) When looking to rehabilitation in a case where the misconduct

involved the theft of client trust funds, it is clear that restitution is "fundamental to the goal of rehabilitation." (*Hippard v. State Bar, supra*, 49 Cal.3d at p. 1094.) It cannot be understated that the weight that should be attached to whether restitution has been undertaken in whole or in part depends on the applicant's ability to restore the misappropriated funds as well as his attitude expressed regarding the matter. (*In re Andreani, supra*, 14 Cal.2d at p. 750; *Resner v. State Bar* (1967) 67 Cal.2d 799*,* 810; *In re Gaffney* (1946) 28 Cal.2d 761, 764; *Hippard v. State Bar*, *supra*, 49 Cal.3d at p. 1094.)

Thus, our review requires us to ascertain if petitioner provided a factual showing that he understood the extent of the harm his misconduct caused, as well as proof of his willingness to remedy it. (See *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 674 [stating that the demonstration of a recognition of the wrongdoing is part of the requirements to show rehabilitation]; see also *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 317 [petitioner demonstrated an appreciation of the gravity of his misconduct].) Without clear and convincing evidence of such, it is difficult to show that rehabilitation has occurred. (Cf. *In the Matter of Distefano, supra*, 1 Cal. State Bar Ct. Rptr. at pp. 674-675.)

The record before us does show that petitioner made restitution to Fisher and Maciel through his bankruptcy estate and as a term of his probation. While a willingness to repay a financial debt is not necessarily at odds with the compliance of a forced mandate (see *In the Matter of Miller* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 423, 429-430), the petitioner must show a proper attitude of mind regarding his offense before he can hope for reinstatement. (*Wettlin v. State Bar* (1944) 24 Cal.2d 862, 869-870.)

In addition, some clients were repaid during petitioner's cycle of theft and repayment, paying one client with another client's money. We cannot conclude, given petitioner's minimal showing, that this manner of restitution is consistent with rehabilitation. No evidence was presented to show that petitioner repaid any of the identified or unidentified clients guided by a moral imperative consistent with the duties of an attorney, or merely to perpetuate his ongoing

scheme or to satisfy the terms of his probation. (Cf. *In re Menna* (1995) 11 Cal.4th 975, 986 [a petitioner is not entitled to the benefit of the doubt if an equally reasonable inference may be drawn from a proven fact].)

The record lacks specificity as to the what amounts were taken from the unnamed clients, how long they had to wait for payment, and, most importantly, the specific harm they incurred and its effect or petitioner's attitude in rectifying that harm. Petitioner did not show that he pursued options available to him in order to make a sufficient showing that he understood the magnitude of his misconduct or his willingness toward restitution, nor did he show that attempts to detail his misappropriation were unavailable. For example, he did not offer in evidence the list he claims was drawn up in connection with his criminal conviction, outlining who the unidentified clients were, how much he misappropriated, and how long those clients had to wait to receive their money. He offered no evidence as to whether his office records described relevant details and he testified that he had not sought any information in the State Bar's possession at the time he resigned which could have helped him ascertain the full extent of his misdeeds. Nor did he show that he contacted the parties or their insurance carriers from whom his clients settled or obtained a judgment to determine the amounts of the award. Nor did he even show evidence of an admission of his misconduct to his clients. If petitioner is unable to identify with any certainty the number of clients harmed or the amounts misappropriated, his assertion that all clients were repaid lacks conviction.

In *Resner v. State Bar*, *supra*, 67 Cal.2d 799, the Supreme Court reinstated a disbarred attorney whose misconduct included misappropriating a client's money. In showing his willingness and earnestness in making restitution, the petitioner submitted a letter from the attorneys representing the harmed client stating that petitioner had made payments to the client during the previous five years as his income would allow. The letter also stated that the petitioner always expressed his sorrow at having caused the client financial harm. The question

regarding the petitioner's attitude toward repayment in *Resner* was affirmatively answered by the client harmed.

Petitioner's misconduct occurred because he found himself overcome by the stresses of his increased financial obligations. Petitioner assured the hearing judge that he would no longer resort to unethical means to pay his debts. Petitioner still has outstanding loan obligations. While that alone would not result in the denial of his petition for reinstatement (see *Resner v. State Bar*, *supra*, 67 Cal.2d at p. 810), given the utter lack of evidence showing his comprehension of the magnitude of harm, or his attitude of mind regarding repayment, his assurances are insufficient evidence of his rehabilitation.

Petitioner admitted to misappropriating funds from 15 to 20 clients. In only two of those cases do we know the manner of restitution. In only five cases do we even know the amounts of money that were misappropriated. We are left to guess as to the total amount misappropriated from the majority of clients that petitioner harmed. Petitioner may have misappropriated an insignificant amount from the remaining clients, or a sum which far exceeded the loss from just the five identified clients. Petitioner may have returned the funds early and willingly or otherwise. We simply do not know.

Under any analysis of the record in view of the applicable law, we can conclude only that petitioner's evidence of rehabilitation from this most serious breach of trust is woefully inadequate.

C. Omissions From the Petition for Reinstatement

It is undisputed that petitioner failed to disclose nine lawsuits to which he was a party. The State Bar contends that petitioner's failure to disclose those nine lawsuits in his petition for reinstatement, along with other omissions, disproves petitioner's rehabilitation. Petitioner testified that he missed the undisclosed lawsuits because he hurried to prepare his petition, and only focused on litigation that occurred in Riverside County.

An omission is not necessarily fatal to a petition for reinstatement. (See *Calaway v. State Bar* (1986) 41 Cal.3d 743 [Supreme Court reinstated an applicant who omitted an ancillary third party claim noting that the underlying action had been disclosed].) However, if an omitted claim is significant or misleading, or conceals derogatory information, reinstatement may be denied. (See *In the Matter of Giddens, supra*, 1 Cal. State Bar Ct. Rptr. 25 [petitioner denied reinstatement where he disclosed no information regarding two lawsuits].)[21]

Contrary to the hearing judge's findings, in our view, the nine undisclosed lawsuits are no more remote in time than any of the eleven disclosed lawsuits.[22] There is also little distinction between the nature of the eleven disclosed and nine undisclosed lawsuits. The omitted lawsuit of most concern is Fisher's civil claim.

While the hearing judge correctly stated that Fisher's claim arose out of the same conduct underlying petitioner's criminal conviction, the disclosure of petitioner's criminal conviction did not reference or point to Fisher's civil claim. (See *Calaway v. State Bar*, *supra*, 41 Cal.3d at p. 748.) We find this to be significant. This was a distinct civil claim that resulted in a separate $65,000 settlement award to Fisher. While the settlement of this claim was paid out of petitioner's bankruptcy estate, petitioner made no mention of this on the petition for

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[21]We note the distinction that in *In the Matter of Giddens*, *supra*, 1 Cal. State Bar Ct. Rptr. 25, the petitioner had previously applied for reinstatement, and one of the undisclosed lawsuits was pending at the time the petition was filed. However, we find *Giddens* instructive in that, with specific regard to the Fisher lawsuit, the disclosure of petitioner's criminal conviction should have refreshed his memory of the connected civil claim. (See *In the Matter of Giddens*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 33.)

[22]Of the 11 disclosed lawsuits, one was filed in 2003, one in 2000, one in 1996, two in 1995, one in 1994, two in 1992, one in 1989, one in 1965, and one in 1959. (The 1965 and 1959 lawsuits represent ongoing litigation that continued for many years in connection with the two Rudnick family trusts.) Of the nine undisclosed lawsuits, one was filed in 1997, two in 1995, four in 1994, one in 1989, and one in 1987.

reinstatement.[23] The Fisher lawsuit does not appear to reflect well on petitioner as it asserted petitioner committed fraud, breach of contract, and deceit in connection with his professional relationship with Fisher. In addition, this claim was filed in Riverside County Superior Court.[24]

Regardless of the reasons for the omissions, we find that the failure to disclose nine lawsuits left "it to chance whether the bar's investigation process would uncover the [lawsuits]." (*In the Matter of Giddens*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 33.) Unlike in *Calaway v. State Bar*, *supra*, 41 Cal.3d 743, here the information regarding the nine omitted lawsuits was not contained in other parts of the petition. While we note that petitioner cured the omission of the nine lawsuits in his supplement to the petition for reinstatement, this was not filed until over a year after the original petition, and subsequent to his deposition in which the State Bar brought these omitted lawsuits to petitioner's attention.

Even if petitioner omitted the nine lawsuits as a result of hurrying to meet a deadline, he had ample time to correct his omission well before he did so. We find petitioner's lack of care and the expedited manner in which he handled the disclosure of his lawsuits, coupled with his lack of evidence to show rehabilitation, to be troubling, and further demonstrate petitioner's failure to understand the seriousness of his misconduct. In addition, we consider petitioner's failure to disclose the TRACO debt, in light of the other omissions, as further demonstrating his carelessness regarding the submission of his petition. We have observed that the petition for reinstatement is not merely a paperwork exercise to hurdle on the way to readmission. (*In the Matter of Giddens*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 34.) Here, petitioner did not even succeed the jump.

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[23]Petitioner did not disclose that the bankruptcy estate paid this claim until he submitted his supplement to the petition for reinstatement.

[24]In total, four of the undisclosed lawsuits were filed in either the Riverside Superior or Municipal Court.

D. Letters in Support of Rehabilitation

Petitioner asserts that both the Supreme Court and this court have reinstated attorneys based primarily on character testimony, and cited to multiple cases in which this occurred. First, it is well-established that character evidence, no matter how laudatory, does not alone establish the requisite rehabilitation. (*In re Menna*, *supra*, 11 Cal.4th at p. 988; see also *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939; *In re Petty* (1981) 29 Cal.3d 356, 362; *Wettlin v. State Bar*, *supra*, 24 Cal.2d at p. 869.)

In *In the Matter of Cate* (1922) 60 Cal.App. 279, a petitioner's application for reinstatement was denied where he had been criminally convicted of embezzlement of his clients' money. In support of his application, the petitioner submitted numerous letters by his co-workers, attorneys, and members of a local bar association. While all submitted that the petitioner had learned a valuable lesson and would conduct himself with propriety in the future, the court found these letters inadequate as none provided facts on which the court could determine the petitioner's rehabilitation. "[N]o disbarred attorney can be reinstated in his old place in the profession except upon a showing of *facts*, aided perhaps by affidavits or even letters of well-known persons, particularly lawyers and judges, expressing a conviction, based on a statement of facts, that the petitioner for reinstatement has reformed, and all demonstrating that he is fit to reassume the ermine which he has already polluted." (*Id.* at p. 283, original italics.)

In instances where significant weight has been afforded to character declarations or testimony, the evidence has been complementary to the other probative evidence of the petition. (See *In the Matter of Salant* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 1, 4 [detailed accounts from two government attorneys for whom petitioner had directly worked in stressful, conflict-laden work where she showed the determination to always do the ethical thing].)

Letters in support of petitioner's reinstatement described him as a man of personal integrity. Some of the declarations described his present involvement in charitable activities and asserted that petitioner's earlier criminal conduct was aberrant behavior traceable to financial

stresses. All of the declarants stated they were aware of petitioner's misconduct. While we do not doubt the sincerity of the comments expressed in support of petitioner, given that petitioner has not accounted for the full financial extent of the harm to his clients, nor the manner in which he made restitution, we do not see how his witnesses can either fully understand the magnitude of petitioner's misconduct or how he made up for it.

E. Other Evidence Regarding Reinstatement

The hearing judge found that petitioner's showing of his present learning and ability in the law was sufficient to meet his burden, and the State Bar has not contested this issue. While not extraordinary, upon our independent review we find petitioner's showing of his present learning and ability in the law sufficient. In addition, we find petitioner's community service and pro bono work positive, but it cannot fill the large hole caused by his failure to prove his rehabilitation from his earlier pattern of misappropriation of trust funds.

Petitioner's failure to timely comply with rule 955 would not necessarily preclude his reinstatement. (*Hippard v. State Bar*, *supra*, 49 Cal.3d at pp. 1096-1097 [noting that the violation occurred over ten years prior to the petition for reinstatement and did not cause any injury to the attorney's clients]; *In the Matter of Salant*, *supra*, 4 Cal. State Bar Ct. Rptr. at pp. 5-6 [failure to comply with rule 955 was not in itself a ground for denial where the attorney had no clients or cases pending at the time of her disbarment, and delegated the submission of this requirement to her counsel who did not follow through].) The *Hippard* court noted that in denying a petitioner for reinstatement where "there is a significant infirmity in the showing of rehabilitation, the failure to comply with rule 955 is a proper consideration." (*Hippard v. State Bar*, *supra*, 49 Cal.3d at p.1097.)

III. CONCLUSION AND RECOMMENDATION

We reiterate that the burden to show rehabilitation on a petitioner seeking reinstatement is a heavy one. Petitioner has not met this burden. He has not demonstrated an understanding of the magnitude of his misconduct nor has he shown the manner in which he rectified the extensive

harm he caused. The evidence presented by petitioner on these crucial issues was so minimal that we can only conclude that he has failed to sustain his burden. Accordingly, the petition for reinstatement is denied.

STOVITZ, J.*

We concur:

REMKE, P. J.

WATAI, J.

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*Retired Presiding Judge of the State Bar Court, sitting by designation of the Presiding Judge.

Case No. 03-R-03557

In the Matter of

ROBERT D. RUDNICK

Hearing Judge

Hon. Richard A. Honn

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